



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2020-0647]

RIN 1625-AA09

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway, Point Pleasant, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: The Coast Guard is changing the regulation that governs the Route 88 (Veterans Memorial) Bridge and Route 13 (Lovelandtown) Bridge across the NJICW at Point Pleasant Canal, mile 3.0 and 3.9, respectively at Point Pleasant, NJ. The final rule allows the drawbridges to be maintained in the closed position overnight.

DATES: The rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2020-0647. In the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Mickey Sanders, Bridge Administration Branch, Fifth District, U.S. Coast Guard, telephone (757) 398-6587, email Mickey.D.Sanders2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
NJICW	New Jersey Intracoastal Waterway

II. Background, Purpose and Legal Basis

On March 26, 2021, we published a noticed of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; New Jersey Intracoastal Waterway, Point Pleasant, NJ in the Federal Register (86 FR 16153). We received no comments on this rule. The Route 88 (Veterans Memorial) Bridge across the NJICW at Point Pleasant Canal, mile 3.0, at Point Pleasant, NJ, has a vertical clearance of 10 feet above mean high water in the closed-to-navigation position. The bridge currently operates under 33 CFR 117.5.

The Route 13 (Lovelandtown) Bridge across the NJICW at Point Pleasant Canal, mile 3.9, at Point Pleasant, NJ, has a vertical clearance of 30 feet above mean high water in the closed-to-navigation position. The bridge currently operates under 33 CFR 117.5.

The Point Pleasant Canal is used predominately by recreational vessels and pleasure craft. The three-year average number of bridge openings, maximum number of bridge openings, and bridge openings between 11 p.m. to 7 a.m., by month and overall for August 2017, through August 2020, as drawn from the data contained in the bridge tender logs, is presented below. There is a monthly average of two bridge openings for each bridge, from 11 p.m. to 7 a.m., from August 2017 to August 2020.

Month	Average Openings	Maximum Openings	Average Openings 11 p.m. – 7 a.m.
January	4	14	0
February	2	7	0
March	7	21	0
April	24	72	2
May	51	154	6
June	74	223	18
July	125	376	20

August	101	407	20
September	63	190	8
October	51	155	6
November	29	89	7
December	16	49	1

III. Discussion of Final Rule

The bridge owner requested to modify the operating regulation for the bridges, due to the limited number of requested openings of the bridges from 11 p.m. to 7 a.m., over a period of approximately three years. The data presented in the table above demonstrates that the requested modification may be implemented with de minimis impact to navigation. The modification will allow the drawbridges to be maintained in the closed position from 11:01 p.m. to 6:59 a.m. and shall open on signal, if at least four hours advance notice is given.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This regulatory action determination is based on the fact that an average of only two bridge openings occurred per month from 11 p.m. to 7 a.m., from August 2017 through August 2020.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridges may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; DHS Delegation No. 0170.1.

2. Revise § 117.733 as follows:

- a. Remove paragraphs (i) and (k);
- b. Redesignate paragraph (j) as paragraph (k);
- c. Redesignate paragraphs (b) through (h) as (d) through (i), and;
- d. Add new paragraphs (b) and (c).

The additions read as follows:

§ 117.733 New Jersey Intracoastal Waterway

* * * * *

(b) The draw of the Route 88 Bridge, mile 3.0, across Point Pleasant Canal at Point Pleasant, shall operate as follows:

- (1) From 7 a.m. to 11 p.m. the draw shall open on signal.

(2) From 11:01 p.m. to 6:59 a.m. the draw shall open on signal, if at least four hours advance notice is given.

(c) The draw of the Route 13 Bridge, mile 3.9, across Point Pleasant Canal at Point Pleasant, shall operate as follows:

(1) From 7 a.m. to 11 p.m. the draw shall open on signal.

(2) From 11:01 p.m. to 6:59 a.m. the draw shall open on signal, if at least four hours advance notice is given.

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Dated: August 9, 2021.

L. M. Dickey,
Rear Admiral, U.S. Coast Guard,
Commander, Fifth Coast Guard District.